

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-124265-12

Date:

December 05, 2012

TY:

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This letter responds to your request, dated May 31, 2012, submitted on behalf of Parent, requesting a ruling that the Commissioner determine, under § 1.1502-75(b)(2) of the Income Tax Regulations, that Sub 4 joined in the making of the initial consolidated Federal income tax return filed by Parent for its short taxable year ending on Date 3. The information submitted in that request is summarized below.

SUMMARY OF FACTS

Parent, a C corporation, was formed on Date 1 as a holding company to acquire, own, and manage various companies. Parent acquired all of the outstanding stock of Sub 1 on Date 2 in a transaction that was not a reverse acquisition under § 1.1502-75(d)(3). At the time of its acquisition by Parent, Sub 1 held all of the stock of Sub 4. Also on Date 2, Parent acquired all of the stock of Sub 2. Parent formed Sub 3, a wholly-owned subsidiary, on or about Date 2.

For the short taxable year ending Date 3, Parent timely filed a Form 1120 that included all of the items of income, gain, deductions, and loss of Parent and Sub 1 through Sub 4 (the "Parent group") for that taxable year. Forms 1122 for Sub 1 through Sub 3 were attached to this initial Parent group return, and these three subsidiaries were included on the Form 851 filed with this return. No Form 1122 was filed for Sub 4 and Sub 4 was not included on the Form 851 filed with this return.

No separate returns have been filed by any of Sub 1 through Sub 4 for the taxable year ending Date 3 or any year thereafter. All of the items of income, gain, deductions, and loss of all members of the Parent group have been included on Parent group's Federal income tax returns for all of its taxable years after its taxable year ending Date 3, as required by § 1.1502-76(b).

Sometime after Date 3, Sub 4's operations ceased. No income was received and no expenses were incurred with respect to Sub 4 after the taxable year in which its operations ceased.

The statute of limitations under § 6501(a) has expired for the return filed by Parent for the taxable year ending on Date 3.

REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to timely file Form 1122 for Sub 4 and to include Sub 4 on its Schedule 851, each member of the Parent group was eligible to join in the filing of a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending Date 3.

- (b) Forms 1122 were timely filed with respect to Sub 1 through Sub 3.
- (c) Sub 1 through Sub 3 were included on the Form 851 attached to the Federal income tax return filed by Parent.
- (d) All income, gain, loss, and deduction items for Sub 1 through Sub 4 for the taxable year ending Date 3 were included in the Federal income tax return timely filed by Parent for the taxable year ending Date 3 as if Parent were the parent of a consolidated group that included Sub 1 through Sub 4.
- (e) None of Parent, Sub 1, Sub 2, Sub 3, or Sub 4 filed a separate return for the taxable year ending Date 3.

APPLICABLE LAW

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in paragraph (a)(1) of this section shall be made by such corporation joining in the making of the consolidated return for such year. A corporate subsidiary shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2). Section 1.1502-75(h)(2) provides that, for a group to file a consolidated return under § 1.1502-75(a)(1), a Form 1122 must be executed by each subsidiary. Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return,

with Form 851 attached, shall be filed with the district director with whom the common parent would have filed a separate return.

RULING

Based solely on the information submitted and representations made, we rule that Sub 4 will be treated under § 1.1502-75(h)(2) as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending Date 3, and thus Sub 4 will be treated as having joined in the making of the consolidated return for such year. § 1.1502-75(b)(2).

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lisa A. Fuller

Lisa A. Fuller
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: